

1859-007 Chancery Causes John M. Beaty vs. John F. Howard
Lee Co.

CA - Debit
T - Property

To the Worshipful County Court of Lee County in Chancery sitting, the bill of complaint of John M. Beaty, of the said County, respectfully represents:

That at the term of the Circuit Court of Lee County held in May 1856, a judgment was rendered in said Court ~~brought~~ in an action debt brought in said Court in the name of Joseph H. Bundy for your orator's benefit, against John F. Howard for \$498.00, with legal interest thereon from the 18th day of October 1854 till paid, and the costs of the suit amounting to \$. Two executions of fieri facias have been issued thereon, both of which were returned "no property found". Subsequent to the return of the last of these, which was returned to February rules 1857, the said Howard was summoned, at the instance of your orator, to appear before a Commissioner of the said Circuit Court to answer interrogatories and give a schedule of all his estate, pursuant to the provisions of the Statute; and accordingly he did appear before John D. Sharp, who was such Commissioner, on the 16th day of March 1857, and in answer to interrogatories then and there propounded to him, he made before the said Commissioner a schedule of his estate of every kind — a copy of the said judgment is herewith filed marked (A.), and copies of the said summons, with the endorsements thereon, and of the interrogatories and his schedule of his estate made in answer thereto are also herewith filed marked (B.). Your orator will also exhibit, if it shall be deemed necessary, ^{a copy} ~~of~~ of the said execution last issued. The small amount of personalty embraced in the said schedule was not delivered, or any part of it. His property consists almost wholly, as appears from said schedule, of six tracts of land, upon one of which it appears he resides. This last mentioned tract, containing 150 acres, is the only one which can be regarded as at all valuable, the others being merely appendages thereto & valuable mainly on account of the timber they afford; they are all situated in this County, and therefore, under the rather curious provisions of the law, were not con=

=veyed by said Howard to the Sheriff for the purpose of satis=
=fying said judgment. Your orator still has the lien of
his judgment upon said lands, and knows of no other
means of ~~making~~ getting payment thereof but by enforcing
that lien, by the aid of a Court of Chancery — for the
Sheriff ^{or any other person} has no authority to sell said lands, & it can only
be done by a decree of a Court of equity. Your orator
further states, that much of the cleared land on the said
tract of 150 acres is poor and worn, and that the said
tracts set forth in said schedule will not rent for a
sufficient annual rent to discharge the said judgment
and the costs of this Chancery suit in five years. Your
orator has been informed by said returns, & believes, that
nothing has been paid towards the discharge of the said
judgment, and he has yet received nothing.

The prayer of your orator therefore is, that the said Howard
be made party defendant to this bill, and be required to
answer its several allegations truly on oath; that he be
also required, by a decree of your worships, to deliver to
the Sheriff of this County, or one of his deputies, the personal
property embraced in said schedule ^{if now to be had} to be sold & the proceeds
applied to said judgment; but as the amount it will bring
is obviously, if all shall be sold, very trivial, that you will
decree that so much of said land be sold for the dis=
=charge of said judgment as may be necessary therefor,
selling first the said out tracts, and only selling the
said 150 acre tract in the event they should not be suffi=
=cient; and that your worships will extend to him such
other and general relief as his case may require & be
consistent with equity. May it please your worships
to grant the Committ^{ee} Spa, directed &c.

Johns Torg, for complet.

J.
John M. Beaty

W. } Bill in Chy.

John F. Howard

1869. March Rules Bill filed
" Apr. Rules. Decree in Li.
" May. Set for hearing by Plffs
" June Term. on Motion of Deft.
" Leave is granted him to file
his answer which is done
" July Rules Continued
" Aug. Rules Continued
" September Continued
" October Continued
" Nov. Continued
" Nov Term. Decree,

c 1.20 added
a 3.48 to Nov 1889-70
u 5.00
s 60
y 1.00

The Answer of John F. Howard to a bill in chancery filed in the County Court of Lee against him by John M. Pearty.

This defendant moving to himself all right of exception to the said bill for its many errors &c for answer thereto saith,

That it is true as alleged in the said bill that a judgment ^{was obtained} against him for \$498⁰⁰ in the Circuit Court of Lee by Joseph H. Bundy for the Plaintiff's benefit on the 18th day of October 1854; that two executions of *juri facias* have been issued in pursuance of said judgment and returned "no property found"; that he has been summoned to appear before a Commissioner to answer interrogatories and give a schedule of his property and that he did appear ^{before} John D. Sharp a Commissioner on the 16th of March 1857, answer interrogatories and give a schedule of his property as is alleged in said bill.

As to the non delivery of the ~~property~~ in personal property named in the schedule, the defendant says that from the time the schedule was given until the return of the execution he was ready and willing to deliver said property whenever called for by the Sheriff, and that said property was never removed or even called for by the Sheriff. It is true that the defendant owns six tracts of land, and resides on the 150 acre tract; but it is not true that the 150 acre is the only one at all valuable, and that the others are mere appendages mainly valuable on account of the timber they afford; the defendant believes and alleges that

the other tracts beside the 150 acre tract are worth at the least the sum of \$4000⁰⁰. It is true that the said tracts of land are situated in the County of Lee.

The defendant says it is not true that the said tracts ^{of land} would not rent for a sufficient annual rent to discharge the said judgement and the costs of this chancery suit in five years; The defendant ^{says} that for the last year ~~had~~ received the sum of \$300⁰⁰ rent for the said land and the food and raiment of his family consisting of four persons, and that he is to receive the same amount of rent for the present year; this amount of rent is for the 150 acre tract alone.

The defendant further states that he ought not to be compelled to pay the sum of \$83⁰⁰ with interest thereon from the date of the note on which the aforesaid judgement is founded; The consideration of the said note was a settlement between defendant and Joseph H Bundy, the settlement arose out of transactions between Bundy and William Cox as agent of the defendant in sale of horses, ^{and other dealings} at the settlement Bundy alleged that Cox as agent of the defendant had agreed to make good to Bundy all such losses as should happen to him on account of the purchase of horses from Cox as agent, and that he had lost on account of said purchase about the sum of \$83⁰⁰ ^{as this defendant believes} which amount the defendant allowed the said Bundy in the said settlement; the defendant has been informed since the commencement of this suit that Cox as his agent made no such agreement with Bundy, and he believes and alleges that Cox as his agent made no such agreement with Bundy; by means of the mis-

representations of Bundy the said note was too large by the said sum of \$83⁰⁰, the defendant has given notice of this fraud at this the earliest opportunity since he has been informed of it, and he asks that in the payment of the aforesaid judgement he may be allowed a credit of \$83⁰⁰ with interest from the date of the note aforesaid.

And the said defendant having fully answered the Plaintiff's bill prays leave to be dismissed with his reasonable costs in this behalf expended and he will ever pray &c

John H. Howard

On this 21st day of June 1859 personally appeared before me Henry S. Morgan Clerk of the County Court of Lee and ~~John H. Howard~~ Howard and made oath that the facts stated in the above answer so far as made on his knowledge are true and so far as made upon knowledge or information derived from others he believes to be true. Given under my hand the day and year aforesaid.

H. S. Morgan C. C.

Beaty } Answer
as } of
Howard } J. F. Howard

John M. Beatty vs. John F. Howard - Chy.

This cause came on this day by the consent of the parties to be heard upon the complt's bill, the answer of the deft, the exhibits filed, & was argued by counsel; And it is thereupon adjudged, ordered, & decreed by the agreement of the parties, that unless the defendant shall fully pay to the Compt the amount of the judgment in his bill mentioned for \$ with legal interest thereon from the day of till paid and the costs of the said action at law including the costs of the proceedings before the Commissioner upon interrogatories filed, before on on the first day of the next March Court of this County, then Peter C. Johnston, who is hereby appointed a Commissioner for the purpose, shall sell at public sale, to the highest bidder, for ready money, at the front door of the Court House of this County, ^{on the first day of some Court} so much of the lands belonging to the defendant & embraced in the ~~set~~ answer to the said interrogatories filed with the complt's bill, as may be sufficient to pay the said judgment & costs, and the costs of this suit including a ^{commission} ~~compensation~~ of five per cent to the said Johnston; but the said Commissioner is required to advertise the said sale at the front door of said Court House from ~~Court~~ ~~to Court~~ the Court next preceeding the day of sale, and also to sell first the out tracts, or so much of them as may be necessary for the purposes aforesaid, and only to sell the home tract whenon the deft resides in the event the other tracts aforesaid shall not produce a sufficient amount to discharge the said judgment, costs, & commission; And the said Commr. is ordered to report his proceedings to this Court; And it is further ordered & decreed, that the Compt

J. M. Beatty

W. } Dece.

J. F. Howard

Nov. Term 1859

1859. Nov. Term. Dece.
interd.

renew against the defendant his cts of this suit.

Virginia,

At a court of quarter Session continued and held for Lee County at the Court House thereof on Thursday the 24th day of November 1859.

John M. Beatty. Complainant.

VS

John F. Howard. Defendant

} In Chancery

This cause came on this day by the consent of the parties to be heard upon the complaint, bill, the answer of the deft. the exhibits filed, and was argued by counsel, and it is thereupon adjudged, ordered, and decreed, by the agreement of the parties, that unless the defendant shall fully pay to the complainant, the amount of the judgment in his bill mentioned for \$ with legal interest thereon from the day of till paid, and the costs of the said action at law including the costs of the proceedings before the Commissioner upon interrogatories, filed before or on the 1st day of the next March Court of this country, then Peter C. Johnston who is hereby appointed a Commissioner for the purpose, shall sell at public sale, to the highest bidder for ready money at the front door of the Court House of this country, on the first day of some Court, as much of the lands belonging to the Defendant, and embraced in the answers to the said interrogatories filed with the complainant's bill, as may be sufficient to pay the said Judgment and costs, and the costs of this suit including a Commissioner of five per cent to the said Johnston; But the said Commissioner is required to advertise the said sale at the front door of said Court House from the Court next preceding the day of sale, and also to sell first the out-tracts or as much of them as may be necessary for the purpose aforesaid, and only to sell the home tract, whereon the defendant resides, in the event the other tracts aforesaid shall not produce a sufficient amount to discharge the said Judgment, Costs and Commission; and the said Commissioner is ordered to report his proceedings to this Court; and it is further ordered, and decreed, that the complainant recover against the Defendant his costs of this suit.

H. Morgan C.C.

John M. Beatty

vs Z Decree

John F. Howard

82.26
21.74

21 46.57

To the Sheriff of Lee County Virginia.

I hereby Command you to summon John F. Howard, if to be found in your bailiwick, to appear before me, on the 21st day of March 1857, to answer on oath the interrogatories filed with me by Joseph H. Bundy on a judgment obtained by him, for the benefit of John M. Beaty, against said John F. Howard, in the Circuit Court of Lee County Virginia, for the sum of \$498.00, with legal interest thereon from the 18th day of October 1854 till payment, & the costs. And then & there make return how you have executed this process.

Given under my hand, this 2nd day of March 1857.

John D. Sharp
Commissioner in the Circuit
Court of Lee County Virginia

Interrogatories filed by Joseph H. Bundy for the benefit of John M. Beaty, which John F. Howard is required to answer on oath, before John D. Sharp, Commissioner in the Circuit Court of Lee County Virginia

1st. What land, or interest in land, either in or out of this state, have you, or had you at the date of judgment?

2nd. What personal property, or interest in personal property, have you, or had you, at the date of judgment, either in your own possession, or in the possession of any other person?

3rd. What money, or Bank notes, have you, either in your own possession, or in that of any other person?

4th. What judgments, bonds, notes, accounts, or other evidences of debt, have you, or had you, at the date of judgment, either in your

own possession, or in the possession
of any other person?

5th. What other property of any kind ^{soever}
have you, or had you, at the date of judgment,
not embraced in the preceding interrogatories?

Bundy for Beatty
vs } Summons
Interrogatories
Copy Judgment
Enc. F. Howard

Executed by giving
to the defendant a
true copy of the
within
H. J. Morgans

(A.)

March 16th 1857. I this day acknowledge
Legal service of the within summons
for today instead of the 21st as mentioned
within
John F. Howard

Answers to the interrogatories filed by Joseph H. Bunday for John M. Beatty against John H. Howard, sworn to before me a Circuit Court Commissioner for Lee County Virginia on the 16th March 1857.

1st. I have a tract of 150 acres of land in this County. And 143 acres of land in this County. And 308 acres of land in this County. And 375 acres of land in this County. And 75 acres of land in this County. And 57 acres of land in this County. The first tract is the one I live on. The 2nd tract lies South of where I live bought from Fisher & Jas Crabtree. The 3rd lies in the Poor Valley. The 4th lies on the ^{Stone} Mountain. The 5th lies in the Poor Valley. The 6th lies on the South side of Poor Valley Ridge.

2nd. I have some 25 or 30 head of hogs. don't know exactly how many.

I have some 9 or 10 head of sheep, 1 plough & gears & a set of harness. & some household furniture.

3rd. I have no money or Bank notes.

4th. I have no debts.

5th. I have some corn about 20 bushels. & some 50 or 60 bushels of thrashed oats.

Sworn to before me This 16th March 1857

John D. Sharp
Commissioner
Circuit Court

Virginia:

At a Circuit Court continued
and held for Lee County at the Court
House thereof on the 17th day of May 1854
Joseph Sturdy who sues for
the benefit of John M. Beatty. Plt

^{vs}
John F. Howard

Def

} In Debt

The defendant not appearing
it is considered by the Court that the judgment
obtained in the Clerks office against him for
\$498. 00 with legal interest thereon from the
18th day of October 1854 till payment and
the costs, be confirmed

Attest;

Wm. H. H. Sproul S.C.

1 Sundy for
Beatty
as } copy - Jud -
D. F. Howard

The Commonwealth of Virginia,

TO THE SHERIFF OF LEE COUNTY—GREETING:

WE COMMAND YOU TO SUMMON

John H. Howard

to appear before the Justices of our County Court for Lee county, at the Court House, *on the 1st Monday*
in March 1859 to answer
a bill in Chancery exhibited in our said Court against *him* by *John M. Beatty*.

And have then there this writ. WITNESS, HENRY J. MORGAN, Clerk of our said Court, at the Court House,
this *28th* day of *February* 185*9*, in the *83rd* year of the Commonwealth.

H. J. Morgan, Clk.

John M. Beatty.

18 Spain Chanary

John H. Howard

March Rules 1869.

received 2nd

March 1859

D Peter Lee